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15 **UNITED STATES DISTRICT COURT**  
16 **CENTRAL DISTRICT OF CALIFORNIA**

17 IN RE SNAP INC.  
18 SECURITIES LITIGATION

19 Case No. 2:17-cv-03679-SVW-AGR

20 **CLASS ACTION**

21 **NOTICE OF MOTION AND**  
22 **MOTION OF THE SNAP**  
23 **SHAREHOLDER GROUP FOR**  
24 **APPOINTMENT AS LEAD**  
25 **PLAINTIFF; MEMORANDUM OF**  
26 **POINTS AND AUTHORITIES IN**  
27 **SUPPORT THEREOF**

28 Date: March 4, 2019  
Time: 1:30 p.m.  
Courtroom: 10A  
Judge: Hon. Stephen V. Wilson

This Document Relates To: All Actions

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## NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on or about March 4, 2019, at 1:30 p.m., before the Honorable Stephen V. Wilson, at the United States District Court for the Central District of California, located at Courtroom 10A of the First Street Courthouse, 350 W. 1st Street, Los Angeles, California, Lead Plaintiff movants Smilka Melgoza, as trustee of the Smilka Melgoza Trust U/A DTD 04/08/2014, Rediet Tilahun, Tony Ray Nelson, Rickey E. Butler, and Alan L. Dukes (collectively, the “Snap Shareholder Group”) will respectfully move this Court for entry of an order, pursuant to Section 27(a)(3)(B) of the Securities Act of 1933 (the “Securities Act”), 15 U.S.C. § 77z-1(a)(3)(B), and Section 21D(a)(3)(B) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78u-4(a)(3)(B), as amended by the Private Securities Litigation Reform Act of 1995 (the “PSLRA”) appointing the Snap Shareholder Group as Lead Plaintiff and approving the Snap Shareholder Group’s selection of Kessler Topaz Meltzer & Check, LLP (“Kessler Topaz”) to serve as Lead Counsel for the class.

This Motion is made on the grounds that the Snap Shareholder Group timely filed this Motion pursuant to the Court’s January 10, 2019 Order reopening the Lead Plaintiff appointment process (ECF No. 208, the “Reopening Order”) and is the “most adequate plaintiff” under the PSLRA. Specifically, the Snap Shareholder Group believes that it has the “largest financial interest” in the relief sought by the class in this litigation and also satisfies the applicable requirements of Federal Rule of Civil Procedure 23 (“Rule 23”) because its claims are typical of other class members’ claims and because it will fairly and adequately represent the interests of the class.

Given the unique nature of this motion, the Snap Shareholder Group respectfully requests that, should another movant claim a larger financial interest, the Court exercise its statutory discretion and appoint the Snap Shareholder Group as Co-Lead Plaintiff with the other movant and appoint Kessler Topaz as Co-Lead Counsel.<sup>1</sup>

<sup>1</sup> As the Court is aware, Kessler Topaz was previously appointed as Lead Counsel to represent the class in this litigation. *See* ECF No. 54 (“Lead Plaintiff Order”).

1 The Motion is made based upon the accompanying Memorandum of Points and  
 2 Authorities in Support Thereof, the Declaration of Sharan Nirmul (the “Nirmul Decl.”)  
 3 filed herewith, the pleadings and other filings in this litigation, and such other written  
 4 or oral argument as may be permitted by the Court. The Snap Shareholder Group  
 5 respectfully requests oral argument.

## 6 MEMORANDUM OF POINTS AND AUTHORITIES

### 7 I. PRELIMINARY STATEMENT

8 Since Kessler Topaz was appointed as Lead Counsel, this securities class action  
 9 has been proceeding expeditiously towards a (now vacated) March 2019 trial date. The  
 10 litigation was first filed on May 16, 2017, and asserts claims under the Securities Act  
 11 and the Exchange Act against Snap Inc. (“Snap” or the “Company”) and certain of  
 12 Snap’s current and former executive officers (collectively, “Defendants”). On  
 13 September 18, 2017, consistent with the requirements of the PSLRA, the Court  
 14 appointed Thomas DiBiase (“DiBiase”) as Lead Plaintiff and Kessler Topaz as Lead  
 15 Counsel. *See* Lead Plaintiff Order. Since their appointment, DiBiase and Kessler  
 16 Topaz have diligently and effectively led this litigation—investigating and drafting a  
 17 highly-detailed amended complaint based, in part, on confidential witness testimony  
 18 developed by Lead Counsel, defeating Defendants’ motions to dismiss and motion for  
 19 interlocutory review, retaining and consulting with industry and damages experts,  
 20 engaging in substantial discovery practice involving the production of more than 1.5  
 21 million pages of documents by Defendants and third parties, completing class  
 22 certification briefing (ECF Nos. 114 & 163), and preparing for trial, including engaging  
 23 a trial and jury consultant. Unexpectedly, after filing his class certification motion,  
 24 DiBiase was forced to withdraw his request to be appointed as a class representative  
 25 after health issues made it apparent that he was no longer able to sit for a deposition or  
 26 serve as a class representative at trial. *See* EFC No. 118. On January 10, 2019, the  
 27 Court issued the Reopening Order and “allow[ed] 21 days—until January 31, 2019—  
 28 for any party to move for appointment as Lead Plaintiff.” Reopening Order at 4.

Pursuant to the Reopening Order, the Snap Shareholder Group respectfully submits that it is the presumptive “most adequate plaintiff” under the PSLRA and should be appointed as Lead Plaintiff. *See* 15 U.S.C. §§ 77z-1(a)(3)(B)(iii)(I), 78u-4(a)(3)(B)(iii)(I) (“the court shall adopt a presumption that the most adequate plaintiff . . . is the person or group of persons that . . . has the largest financial interest in the relief sought by the class [and] otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure”). To the best of the Snap Shareholder Group’s knowledge, its losses of approximately **\$486,597** on a last-in, first-out (“LIFO”) basis in connection with its transactions in Snap securities during the Class Period (March 2, 2017, through August 10, 2017) represents the largest known financial interest in the relief sought by the class. *See* Nirmul Decl., Exs. A & B.

In addition to asserting the largest financial interest, the Snap Shareholder Group readily satisfies the relevant requirements of Rule 23 because its claims are typical of all members of the class and because it will fairly and adequately represent fellow investors. *See infra* Section III.1.C. Indeed, the Snap Shareholder Group reflects a diverse cross-section of the investors that comprise the class, both geographically and demographically. As set forth in greater detail in the Joint Declaration submitted herewith, the members of the Snap Shareholder Group fully understand the obligations the lead plaintiff owes to the class under the PSLRA and are willing and able to undertake these responsibilities to ensure the vigorous prosecution of this action. *See* Nirmul Decl., Ex. C (“Joint Declaration”). The Joint Declaration also provides details about each group member’s background, why the members decided to seek appointment with each other, why the Snap Shareholder Group selected Kessler Topaz as Lead Counsel, how the group intends on functioning, protocols implemented by the group to communicate with and without counsel, the group’s goals of reinitiating the prosecution of the class’s claims as soon as possible without duplication of work, and each member’s commitment to participating in the discovery process and seeing this case through its conclusion. *See* Joint Decl., ¶¶ 2-8; 11-20. The Snap Shareholder



1 Group is already functioning as a cohesive unit and its members convened two joint  
2 conference calls prior to filing this motion to discuss, among other things, several of  
3 the topics listed above. *See id.*, ¶ 12.<sup>2</sup>

4 No other movant is prepared to effectively and efficiently resume the  
5 prosecution of this case and, as a result, none can satisfy Rule 23's adequacy  
6 requirement. In fact, no other movant has even contacted Kessler Topaz to discuss a  
7 plan for managing this litigation without disruption or duplication of efforts, including  
8 marshalling discovery (which thus far has involved Lead Counsel's review and  
9 synthesis of more than 1.5 million pages of documents produced to date and extensive  
10 data analytics on Snap's various user metrics), preparing for over a dozen depositions,  
11 the first of which were scheduled to begin days before the Court entered a stay in this  
12 action, resuming negotiations with Defendants and third parties regarding numerous  
13 production deficiencies on outstanding document requests and subpoenas, pursuing  
14 the pending discovery matters before Magistrate Judge Rosenberg with regards to  
15 document production, continuing to develop the analysis of the industry and damages  
16 experts who have been working with Lead Counsel for many months, all of which  
17 involve complex legal and factual issues, and continuing the work with Lead Counsel's  
18 trial consultants.

19 Finally, by retaining Kessler Topaz to serve as Lead Counsel for the class, the  
20 Snap Shareholder Group has not only cemented its adequacy but has selected  
21 experienced and competent counsel that has already zealously and effectively  
22 represented the class as Court-appointed Lead Counsel in this litigation. Accordingly,  
23 the Snap Shareholder Group's selection of Kessler Topaz as Lead Counsel should be  
24

25 <sup>2</sup> If appointed as Lead Plaintiff, the Snap Shareholder Group intends on seeking  
26 the appointment of Donald R. Allen ("Allen") and Shawn B. Dandridge  
27 ("Dandridge")—two highly qualified and committed class members who sought  
28 appointment as proposed class representatives in this litigation and who were deposed,  
produced documents, and responded to interrogatories—as class representatives in  
connection with the Snap Shareholder Group's filing of a motion for class certification.



1 approved. *See* 15 U.S.C. §§ 77z-1(a)(3)(B)(v), 78u-4(a)(3)(B)(v) (“The most adequate  
2 plaintiff shall, subject to the approval of the court, select and retain counsel to represent  
3 the class.”).

4 Finally, the Snap Shareholder Group recognizes that the matter before the Court  
5 is not the typical case where all movants are appearing at the outset of an action with  
6 a fundamentally uniform basis of knowledge about the litigation. Rather, unlike any  
7 other movant before the Court, the Snap Shareholder Group’s proposed Lead Counsel  
8 has expended millions of dollars in attorney time and litigation expenses for the benefit  
9 of the class. The Snap Shareholder Group strongly believes that the class would be  
10 harmed if this institutional knowledge was lost or needed to be relearned at the class’s  
11 expense. Accordingly, should another movant assert a greater financial interest in this  
12 litigation than the Snap Shareholder Group (and otherwise satisfy the requirements of  
13 the PSLRA), the Snap Shareholder Group respectfully requests that the Court—in  
14 order to protect the interests of the class—should exercise its statutory discretion, as  
15 other courts have previously done, and appoint the Snap Shareholder Group as Co-  
16 Lead Plaintiff and appoint Kessler Topaz as Co-Lead Counsel. *See Pirelli Armstrong*  
17 *Tire Corp. Retiree Med. Benefits Tr. v. LaBranche & Co., Inc.*, 229 F.R.D. 395, 420  
18 (S.D.N.Y. 2004) (citing “the Court’s acknowledged discretion in the lead plaintiff  
19 appointment process” and concluding that “a co-lead plaintiff structure is appropriate  
20 [and] will help to ensure that adequate resources and experience are available to the  
21 prospective class in the prosecution of this action”) (citation omitted); *Lusk v. Life*  
22 *Time Fitness, Inc.*, No. 15-1011 JRT/JJK, 2015 WL 9858177, at \*2 (D. Minn. July 10,  
23 2015) (appointing co-lead plaintiffs where doing so “would best protect the [class’s]  
24 interests”); *cf. In re Lucent Techs., Inc. Sec. Litig.*, 221 F. Supp. 2d 472, 488 (D.N.J.  
25 2001) (appointing co-lead plaintiff structure consisting of previously-appointed lead  
26 plaintiff and new lead plaintiff movant asserting the largest financial interest). There  
27 would be no benefit to the class by vacating the substantial work Kessler Topaz has  
28 undertaken to advance this litigation at this late stage. Accordingly, should

1 circumstances warrant, the appointment of the Snap Shareholder Group as Co-Lead  
2 Plaintiff and Kessler Topaz as Co-Lead Counsel would be in the best interests of the  
3 class.

## 4 **II. FACTUAL BACKGROUND**

### 5 **1. Relevant Procedural History**

6 As the Court is aware, the instant litigation has rapidly unfolded since it was  
7 commenced.

8 **Appointment of Lead Plaintiff:** On September 18, 2017, the Court appointed  
9 DiBiase as Lead Plaintiff and Kessler Topaz as Lead Counsel to represent the class.  
10 *See* Lead Plaintiff Order. In appointing DiBiase, the Court rejected competing movant  
11 Shinu Gupta’s motion for appointment as lead plaintiff—finding that Gupta was  
12 subject to unique defenses that “undermine ‘the ability of [Mr. Gupta] to assert the  
13 fraud-on-the-market presumption of reliance, thereby rendering [him] inadequate.” *Id.*  
14 at 4 (alterations in original). The other competing movants had previously withdrawn  
15 their motions. *See* ECF Nos. 27, 33, & 36.

16 **Amended Complaint and Motion to Dismiss Ruling:** On November 1, 2017,  
17 DiBiase and Kessler Topaz filed the Consolidated Amended Class Action Complaint  
18 for Violation of the Federal Securities Laws, which asserts claims against Defendants  
19 under the Securities Act and the Exchange Act. *See* ECF No. 67 (the “Amended  
20 Complaint”). Prior to the filing of the Amended Complaint, Kessler Topaz conducted  
21 an extensive factual investigation, which included numerous interviews with former  
22 Snap employees, including two former employees who are quoted extensively  
23 throughout the Amended Complaint. *See* ECF 201-1, ¶ 3; Nirmul Decl., ¶ 2.  
24 Specifically, the Amended Complaint pleads in significant detail that Snap’s executive  
25 management was alerted to internal concerns regarding Facebook (and its Instagram  
26 platform) and its impact on Snap’s user growth and engagement as well as Snap’s  
27 ability to compete for advertisers and monetize Snap’s platform. According to  
28 confidential witness testimony, these concerns were downplayed by Snap’s executive

1 management and resulted in internal sales projections and assumptions regarding the  
2 Company's ability to grow and monetize its platform that were not realistic.<sup>3</sup> The  
3 existential threat that Instagram posed to Snap's growth was a known risk that was  
4 downplayed in the offering materials for Snap's March 3, 2017 IPO, and the misleading  
5 disclosures in the IPO materials regarding the true competitive risks facing Snap are  
6 the basic tenet of this litigation.

7 On June 7, 2018, the Court denied Defendants' motions to dismiss the Amended  
8 Complaint in full. *See In re Snap Inc. Sec. Litig.*, No. 2:17-CV-03679-SVW-AGR,  
9 ECF No. 92, 2018 WL 2972528 (C.D. Cal. June 7, 2018) ("MTD Order"). Defendants  
10 thereafter filed a motion to certify the MTD Order for interlocutory appeal, which the  
11 Court denied on August 8, 2018. *See In re Snap Inc. Sec. Litig.*, No. 2:17-CV-03679-  
12 SVW-AGR, ECF No. 108, 2018 WL 3816764, at \*3 (C.D. Cal. Aug. 8, 2018) (denying  
13 motion and stating that "the Defendants have not met their heavy burden of showing a  
14 difference of opinion or controlling question of law, which—if addressed—would  
15 avoid protracted and expensive litigation"). Defendants filed their answer to the  
16 Amended Complaint on June 29, 2018. *See* ECF No. 102. On August 8, 2018, the  
17 Court scheduled this matter for trial beginning on March 12, 2019. *See* ECF No. 109.

18 At the time the Amended Complaint was filed, Snap was not subject to any  
19 governmental investigation regarding its IPO disclosures. However, on November 13,  
20 2018, Snap confirmed that it had responded to subpoenas from the U.S. Department of  
21 Justice and the U.S. Securities and Exchange Commission—presumably relying on the  
22 work performed by Kessler Topaz on behalf of the class. Indeed, Snap stated that it  
23 believed "that these regulators are investigating issues related to the previously  
24 disclosed allegations *asserted in the class action* about our IPO disclosures."<sup>4</sup>

25  
26 <sup>3</sup> The two former employees were scheduled to be deposed in this case but their  
27 depositions were taken off calendar in connection with the partial stay of the case.

28 <sup>4</sup> *See, e.g.,* Tim Bradshaw, *Snap reveals IPO probe from US regulators*,  
FINANCIAL TIMES, Nov. 13, 2018 (emphasis added).

**Class Certification Motion:** On August 30, 2018, DiBiase and Kessler Topaz filed a motion seeking to certify this case as a class action and the appointment of DiBiase, Allen, and Dandridge as class representatives. *See* ECF No. 114. On September 28, 2018, DiBiase filed a notice informing the Court that, due to unexpected and serious health issues that precluded him from sitting for his deposition or serving as a class representative at trial, he intended to withdraw his application to serve as a class representative. *See* EFC No. 118. While DiBiase was prepared to “remain as a Lead Plaintiff until Mr. Allen and Mr. Dandridge,” who have been deposed, “[we]re added as named plaintiffs, and until Mr. Allen and Mr. Dandridge [we]re appointed by the Court as Class representatives,” *id.* at 2, the Court instead reopened the lead plaintiff process and announced that it “will allow 21 days—until January 31, 2019—for any party to move for appointment as Lead Plaintiff.” Reopening Order at 4.

Prior to the issuance of the Court’s Reopening Order, the parties completed briefing in connection with the motion for class certification and were prepared for oral argument to be heard on January 7, 2019.<sup>5</sup>

## **2. Discovery Efforts To Date**

Since their appointment on September 18, 2017, DiBiase and Kessler Topaz have engaged in substantial discovery efforts. In addition to responding to Defendants’ document and interrogatory requests and producing documents (as well as related motion practice, *see, e.g.*, ECF No. 172), DiBiase and Kessler Topaz have served extensive discovery requests on Defendants and other relevant third parties. First, on June 29, 2018, DiBiase and Kessler Topaz served forty-nine unique document requests on Defendants. *See* Nirmul Decl., ¶ 6. Since that time, the parties have met and conferred extensively regarding Defendants’ document production. *See id.* Defendants’ document production was also the subject of a motion to compel, which sought from Defendants additional data sources, search terms, and custodians. *See*

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<sup>5</sup> On November 26, 2018, the Court issued a partial stay of the case and vacated the trial date and all pre-trial deadlines. *See* Reopening Order at 2.

1 ECF No. 136. After a nearly three-hour in-person hearing, Magistrate Judge  
2 Rosenberg granted that motion in large part. *See* ECF No. 137. The in-person hearing  
3 was followed by two telephonic hearings on issues emanating from the initial hearing  
4 and a number of discovery issues that have been previously raised with Magistrate  
5 Judge Rosenberg that remain unresolved and will very likely require further Court  
6 intervention. *See* Nirmul Decl., ¶ 7.

7 In response to these efforts, Defendants have, to date, produced more than 1.5  
8 million pages of documents. *See id.*, ¶ 9. DiBiase and Kessler Topaz also received  
9 over 26,000 pages of documents from Snap’s underwriters. *See id.* A substantial  
10 portion of these documents, including documents identified as most likely to contain  
11 relevant information through technology-assisted review, has been reviewed by staff  
12 and contract attorneys and synthesized for Kessler Topaz’s litigation team. *See id.*, ¶  
13 11. Defendants had represented that they expect to substantially complete document  
14 production by no later than mid-January 2019, although the stay of the litigation and  
15 the reopening of the lead plaintiff selection process has suspended the parties’ efforts  
16 to meet and confer on any outstanding deficiencies. *See id.*, ¶ 10.

17 Second, DiBiase and Kessler Topaz noticed four depositions of current and  
18 former Snap employees, of the approximately fifteen depositions that were  
19 contemplated and for which Kessler Topaz has already undertaken significant  
20 preparation, as well as served a comprehensive notice of deposition on Snap under  
21 Federal Rule of Civil Procedure 30(b)(6) (“Rule 30(b)(6)”). *See id.*, ¶ 12. The parties  
22 met and conferred extensively on the topics on which Snap would produce witnesses  
23 and had reached substantial agreement on the scope of these depositions. *See id.*, ¶ 13.  
24 These depositions were set to begin at the end of November, with depositions of three  
25 former Snap employees and four Rule 30(b)(6) corporate designees confirmed. *See id.*  
26 Notably, on October 25, 2018, following a telephonic hearing, Magistrate Judge  
27 Rosenberg denied Defendants’ request to enjoin the Rule 30(b)(6) depositions as well  
28 as two depositions of former Snap employees in light of DiBiase’s withdrawal.

1 See ECF No. 146. While these depositions were taken off the calendar, the Snap  
2 Shareholder Group intends on pursuing these depositions if appointed Lead Plaintiff.  
3 See Nirmul Decl., ¶ 13.

4 Third, DiBiase and Kessler Topaz served fifteen document subpoenas and four  
5 deposition subpoenas on third parties, including Ernst & Young, Jared Leto,  
6 PriceWaterhouseCoopers, Oath, Sensor Tower, Anthony Pompliano, and numerous  
7 other former Snap employees. See *id.*, ¶ 8. In response to these subpoenas, DiBiase  
8 and Kessler Topaz received more than 1,800 pages of documents but further  
9 negotiations on the sufficiency of these productions have since been suspended because  
10 of the partial stay. See *id.*, ¶ 9.

11 Fourth, in anticipation of expert disclosures—which were previously due on  
12 December 12, 2018 (see ECF No. 177)—DiBiase and Kessler Topaz retained two  
13 merits experts and one damages expert. Each expert has done substantial work  
14 reviewing case materials and preparing for the previous December 12, 2018 disclosure  
15 deadline. See Nirmul Decl., ¶ 14. DiBiase and Kessler Topaz also retained a trial  
16 consultant, who has similarly engaged in substantial efforts to assist Kessler Topaz in  
17 preparing this case for trial. See *id.*, ¶ 15.

18 Finally, as Defendants previously disclosed to the Court, the parties had engaged  
19 a mediator and were preparing to mediate this case in accordance with the Court's  
20 January 4, 2019 deadline when the issues concerning DiBiase arose. See *id.*, ¶ 17.

21 In sum, Kessler Topaz has invested more than 20,000 attorney hours (or more  
22 than \$7.5 million in lodestar) and incurred hundreds of thousands of dollars in expenses  
23 prosecuting this case. See *id.*, ¶ 20.

24 Kessler Topaz remains committed to aggressively litigating this case on an  
25 expedited basis.



1 **III. ARGUMENT**

2 **1. The Snap Shareholder Group Satisfies the PSLRA's Procedural**  
3 **Requirements and Should Be Appointed Lead Plaintiff**

4 The PSLRA's lead plaintiff selection process provides that "the court shall adopt  
5 a presumption that the most adequate plaintiff . . . is the person or *group of persons*  
6 that . . . has the largest financial interest in the relief sought by the class [and] otherwise  
7 satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure." 15  
8 U.S.C. §§ 77z-1(a)(3)(B)(iii)(I), 78u-4(a)(3)(B)(iii)(I) (emphasis added).

9 Here, the Snap Shareholder Group is the "most adequate plaintiff" because it:  
10 (i) timely moved for appointment as Lead Plaintiff; (ii) possesses the "largest financial  
11 interest in the relief sought by the class"; and (iii) "otherwise satisfies the requirements  
12 of Rule 23" for purposes of this Motion. *Id.*

13 **A. The Snap Shareholder Group Timely Moved for Appointment**  
14 **as Lead Plaintiff**

15 Pursuant to the Reopening Order, the Court has "allow[ed] 21 days—until  
16 January 31, 2019—for any party to move for appointment as Lead Plaintiff."  
17 Reopening Order at 4. Accordingly, the Snap Shareholder Group's motion is timely.

18 **B. The Snap Shareholder Group Has the Largest Financial**  
19 **Interest in the Relief Sought by the Class**

20 Here, the Snap Shareholder Group suffered losses of approximately **\$486,597**  
21 under a LIFO analysis in connection with its Class Period purchases of Snap securities.  
22 *See* Nirmul Decl., Exs. A & B. To the best of the Snap Shareholder Group's  
23 knowledge, there are no other lead plaintiff movants asserting a larger financial interest  
24 in this litigation.

25 **C. The Snap Shareholder Group Satisfies the Relevant**  
26 **Requirements of Rule 23**

27 In addition to possessing the largest financial interest in the relief sought by the  
28 class, the lead plaintiff must also "otherwise satisf[y] the requirements of Rule 23 of



1 the Federal Rules of Civil Procedure” in order to trigger the presumption of adequacy.  
2 *See* 15 U.S.C. §§ 77z-1(a)(3)(B)(iii)(I), 78u-4(a)(3)(B)(iii)(I).

3 Rule 23(a) provides that a party may serve as a class representative if: (i) the  
4 class is so numerous that joinder of all members is impracticable; (ii) there are  
5 questions of law or fact common to the class; (iii) the claims or defenses of the  
6 representative parties are typical of the claims or defenses of the class; and (iv) the  
7 representative parties will fairly and adequately protect the interests of the class.  
8 However, a movant need only make a preliminary showing that it meets the typicality  
9 and adequacy requirements during the lead plaintiff selection process. *See Shreves v.*  
10 *Xunlei Ltd.*, Nos. cv-15-04299-MWF (ASx), *et al.*, 2015 WL 5446935, at \*3 (C.D. Cal.  
11 Sept. 15, 2015) (“the Court’s crucial inquiry is whether [the movant] also satisfies the  
12 ‘typicality’ and ‘adequacy’ requirements under Federal Rule of Civil Procedure 23”) (citation omitted).

14 **i. The Snap Shareholder Group’s Claims Are Typical**

15 The typicality requirement is satisfied where the movant’s claims are “similar to  
16 all class members.” *Id.* The Snap Shareholder Group satisfies the typicality  
17 requirement because, just like all other proposed class members, the Snap Shareholder  
18 Group seeks to recover the losses it suffered on its Snap investments as a result of  
19 Defendants’ misrepresentations and omissions. Moreover, ***no member*** of the Snap  
20 Shareholder Group purchased ***any*** shares after the May 10, 2017 corrective  
21 disclosure—which the Court has already held would be disqualifying for a lead  
22 plaintiff movant. *See* Lead Plaintiff Order at 5 (“post-disclosure purchases can defeat  
23 the typicality requirement for class certification when plaintiffs made a  
24 disproportionately large percentage of then purchases post-disclosure”). Thus, the  
25 Snap Shareholder Group’s claims arise from the same conduct as those of the other  
26 class members. Accordingly, the Snap Shareholder Group satisfies Rule 23’s typicality  
27 requirement. *See Xunlei*, 2015 WL 5446935, at \*3.

1                                **ii.            The Snap Shareholder Group Is Adequate**

2            The adequacy element of Rule 23 requires that the Lead Plaintiff “fairly and  
3 adequately protect the interests of the class.” Rule 23(a). This element is satisfied  
4 where: (i) the movant is “willing[] to vigorously represent the class’s claims”; (ii) “the  
5 movant’s interests do not conflict with those of the class”; and (iii) “the movant’s  
6 counsel is capable and qualified.” *Xunlei*, 2015 WL 5446935, at \*3 (citation omitted).

7            Here, there are no conflicts between the Snap Shareholder Group and the class  
8 as each seeks to recover losses caused by Defendants’ false and misleading statements.  
9 Moreover, the members of the Snap Shareholder Group have submitted certifications  
10 affirmatively demonstrating their willingness to pursue this litigation for the benefit of  
11 the class. *See* Nirmul Decl., Exs. A & C.

12            To further demonstrate its adequacy, the Snap Shareholder Group has also  
13 submitted herewith a Joint Declaration providing background information about the  
14 members and detailing its members’ motivations for seeking appointment together,  
15 their rationale for selecting Kessler Topaz as Lead Counsel, and steps they have  
16 implemented to ensure that the class’s claims will be prosecuted zealously. *See* Nirmul  
17 Decl., Ex. C; *see also* 15 U.S.C. § 77z-1(a)(3)(B)(iii)(I) (allowing for the appointment  
18 of a group); *Camp v. Qualcomm Inc.*, No. 18-CV-1208-AJB-BLM, 2019 WL 277360,  
19 at \*3 (S.D. Cal. Jan. 22, 2019) (rejecting movant for, *inter alia*, failing to provide “basic  
20 details about himself, including where he lives or who he is specifically in his motion”).  
21 Specifically, the Joint Declaration establishes, *inter alia*, that:

- 22
- 23            • Based on their respective financial losses, their commitment  
24 to ensuring efficiency of representation, and the avoidance  
25 of unnecessary waste, after substantial consideration, the  
26 Snap Shareholder Group’s members each independently  
27 determined that they could maximize the potential recovery  
28 for the class by jointly seeking appointment as lead plaintiff

1 and by proposing Kessler Topaz as Lead Counsel (Joint  
2 Decl., ¶¶ 7-8);

- 3 • Before filing a motion, members of the Snap Shareholder  
4 Group held two joint conference calls to discuss, among  
5 other things, the procedural history of the litigation, seeking  
6 appointment in this case, the benefits of joint decision-  
7 making, and the benefits of retaining Kessler Topaz to  
8 continue representing the class as Lead Counsel (*Id.*, ¶¶ 12-  
9 13);
  - 10 • The Snap Shareholder Group's members acknowledge that  
11 they were under no obligation to select Kessler Topaz as  
12 Lead Counsel; however, the Snap Shareholder Group  
13 reiterates that its decision to seek appointment as Lead  
14 Plaintiff is motivated, in part, by its belief that Kessler  
15 Topaz's reappointment as Lead Counsel is in the best  
16 interests of the class given that Kessler Topaz is, based on  
17 the firm's prosecution of the matter to date, capable of  
18 aggressively litigating this case without unnecessary  
19 expense, delay, or duplication of work (*Id.*, ¶¶ 7; 11; 18);
  - 20 • The Snap Shareholder Group's members have explicitly  
21 acknowledged and accepted their duties and obligations to  
22 all class members if selected as Lead Plaintiff and are  
23 committed to seeking the largest possible recovery for the  
24 class (*Id.*, ¶¶ 2-7; 20);
  - 25 • The Snap Shareholder Group's members are committed to  
26 overseeing counsel to ensure that the case is efficiently  
27 litigated in the class's best interests (*Id.*, ¶¶ 7; 18-19);
- 28

- 1       • The members of the Snap Shareholder Group acknowledge  
2       that this action may proceed quickly and are committed to  
3       producing relevant documents and sitting for a deposition in  
4       a timely manner (*Id.*, ¶ 14);
- 5       • The Snap Shareholder Group’s members are committed to  
6       collaboratively working together to manage this litigation on  
7       behalf of the proposed class and have implemented protocols  
8       for communicating with each other (with and without  
9       counsel present) as necessary, excluding on short notice and  
10      for resolving any disputes (if any arise) (*Id.*, ¶¶ 16-17); and
- 11      • The members of the Snap Shareholder Group have  
12      reaffirmed their commitment to lead by consensus and is  
13      driven by their diverse experiences and their shared fiduciary  
14      duty to the class (*Id.*, ¶¶ 17; 20).

15       The specificity of the Joint Declaration confirms the Snap Shareholder Group’s  
16      adequacy and its members’ ability to operate as a functioning, cohesive group separate  
17      from their counsel, and meets the evidentiary threshold required by courts to appoint a  
18      group under the PSLRA. *See Miami Police Relief & Pension Fund v. Fusion-io, Inc.*,  
19      No. 13-CV-05368-LHK, 2014 WL 2604991, at \*5 (N.D. Cal. June 10, 2014) (“Courts  
20      have found that such joint declarations are demonstrative of a movant group’s  
21      adequacy as lead plaintiff.”) (citation omitted); *In re Bank of Am. Corp. Sec.*,  
22      *Derivative & Emp’t Ret. Income Sec. Act (ERISA) Litig.*, 258 F.R.D. 260, 270  
23      (S.D.N.Y. 2009) (appointing group and noting “declarations demonstrating  
24      cooperative efforts among” the group’s members); *Sabbagh v. Cell Therapeutics, Inc.*,  
25      Nos. C10-414MJP, *et al.*, 2010 WL 3064427, at \*6 (W.D. Wash. Aug. 2, 2010) (the  
26      “declarations address every concern raised by courts who have questioned the ability  
27      of previously-unrelated group[s]” to represent the class).

1           Moreover, the Snap Shareholder Group has demonstrated its adequacy through  
2 its selection of Kessler Topaz to serve as Lead Counsel for the class. As discussed  
3 below, Kessler Topaz is highly qualified and experienced in the area of securities class  
4 action litigation and, as the current Court-appointed Lead Counsel, has zealously  
5 represented the class in this litigation to date.

6           The Snap Shareholder Group is the only movant capable of satisfying Rule 23's  
7 adequacy requirement. As explained by the court in *Xunlei*, "[a] court should inquire  
8 about the movant's interests in the outcome of the case and their **willingness to**  
9 **vigorously represent the class's claims** to determine if a preliminary showing of  
10 adequacy" has been made. 2015 WL 5446935, at \*3 (emphasis added) (citation  
11 omitted). Consistent with *Xunlei*, this Court has held that "[t]he criteria courts must  
12 consider for choosing a Lead Plaintiff are not as absolute as [argued by counsel]." Lead  
13 Plaintiff Order at 6. Rather, "[t]he PSLRA asks the Court to consider whether a  
14 plaintiff will fairly and adequately represent the class as the case moves forward." *Id.*  
15 Thus, evidence that movants will protect the class **going forward** is inextricably  
16 intertwined with a showing of adequacy. *See id.*

17           Here, the Snap Shareholder Group's selection of Kessler Topaz and the active  
18 engagement of its members demonstrated via the Joint Declaration establishes their  
19 commitment to vigorously representing the class's interests. Given the unique  
20 procedural posture of this case, a movant's failure to conduct basic diligence into how  
21 this case could be transitioned to new counsel without significant duplication of costs  
22 (ultimately borne by the class) demonstrates the absence of acting in the class's  
23 interests and shows no willingness to protect the class "as the case moves forward".  
24 *See* Lead Plaintiff Order at 6. Here, no other potential movants contacted Kessler  
25 Topaz to coordinate efforts, discuss a transition plan, or otherwise inquire how the  
26 litigation could be prepared for trial without significant duplication of costs or delay.  
27 Such a lack of interest in how to actually litigate a case that was (until the recent stay)  
28 months away from trial and has incurred millions of dollars in attorney time and

1 expenses illustrates that no competing movant has a sufficient understanding of the  
2 steps needed to immediately assume leadership without unduly burdening the class.  
3 Willful ignorance of these critical facts undermines any argument that competing  
4 movants have the ability to act in the class's best interests. *See id.*; *Xunlei*, 2015 WL  
5 5446935, at \*3.

6 In contrast, the Snap Shareholder Group has been fully advised of the  
7 developments in this litigation, is prepared to engage in discovery, and has selected  
8 counsel able to continue prosecuting the case without any delay or duplication of  
9 efforts. *See* Joint Decl., ¶¶ 9-11; 14. The Snap Shareholder Group is the only movant  
10 who has provided actual evidence of their commitment to protect the class as the case  
11 progresses towards trial. As such, other than the Snap Shareholder Group, no movant  
12 can make the necessary showing of adequacy given the unique facts before the Court.  
13 *See* Lead Plaintiff Order at 6; *Xunlei*, 2015 WL 5446935, at \*3.

14 **2. The Court Should Approve the Snap Shareholder Group's Selection**  
15 **of Counsel**

16 The PSLRA vests authority in the lead plaintiff to select and retain counsel for  
17 the class, subject to the Court's approval. *See* 15 U.S.C. §§ 77z-1(a)(3)(B)(v), 78u-  
18 4(a)(3)(B)(v) ("The most adequate plaintiff shall, subject to the approval of the court,  
19 select and retain counsel to represent the class."); *see also* Lead Plaintiff Order at 7  
20 (outlining lead plaintiff's authority to select lead counsel).

21 Here, the Snap Shareholder Group has selected and retained Kessler Topaz to  
22 serve as Lead Counsel for the class. As the Court has previously noted, "Kessler Topaz  
23 specialized in class action litigation and has prosecuted numerous other securities fraud  
24 class action." *See id.*; *see also* Nirmul Decl., Ex. D. The firm is actively engaged in  
25 complex litigation, and, in addition to the work Kessler Topaz has done to advance the  
26 claims in this litigation, the firm has successfully prosecuted numerous securities fraud  
27 class actions on behalf of injured investors, including: *In re Tyco International, Ltd.*  
28 *Securities Litigation*, No. 02-md-1335 (PB) (D.N.H.) (\$3.2 billion recovery); *In re*



1 *Bank of America Corp. Securities, Derivative, & Employee Retirement Income Security*  
2 *Act (ERISA) Litigation*, No. 09-md-2058 (PKC) (S.D.N.Y.) (\$2.425 billion recovery);  
3 *In re Wachovia Preferred Securities and Bond/Notes Litigation*, No. 09-cv-6351 (RJS)  
4 (S.D.N.Y.) (\$627 million recovery); and *In re Lehman Bros. Equity/Debt Securities*  
5 *Litigation*, No. 08-cv-5523 (LAK) (S.D.N.Y.) (\$615 million recovery). Additionally,  
6 Kessler Topaz is currently serving as lead or co-lead counsel in several high profile  
7 securities class actions, including: *Sjunde AP-Fonden v. General Electric Co.*, No. 17-  
8 cv-8457 (JMF) (S.D.N.Y.); *In re Allergan Generic Drug Pricing Securities Litigation*,  
9 No. 16-cv-9449 (KSH) (CLW) (D.N.J.); *Baker v. SeaWorld Entertainment, Inc.*, No.  
10 14-cv-2129 (MMA) (AGR) (S.D. Cal.); and *Washtenaw County Employees'*  
11 *Retirement System v. Walgreen Co.*, No. 15-cv-3187 (SJC) (MMR) (N.D. Ill.).

12 Kessler Topaz's commitment to zealous representation is also evident from its  
13 trial experience under the PSLRA. Specifically, the firm obtained a rare jury verdict  
14 in the class's favor after a week-long trial held before the Honorable Shira A.  
15 Scheindlin in 2014 in *In re Longtop Financial Technologies Ltd. Securities Litigation*,  
16 No. 11-cv-3658 (SAS) (S.D.N.Y.)—one of just thirteen securities class actions to reach  
17 a verdict since enactment of the PSLRA in 1995 (based on post-enactment conduct).  
18 The firm also obtained the largest damage award in Delaware Chancery Court history  
19 following a trial before Chancellor Leo E. Strine, Jr., see *In re Southern Peru Copper*  
20 *Corp. Shareholder Derivative Litigation*, No. 961-CS (Del. Ch.), *aff'd Americas*  
21 *Mining Corp. v. Theriault*, 51 A.3d 1213, 1262-63 (Del. 2012) (affirming final  
22 judgment, with interest, of \$2 billion), and has taken numerous other actions to either  
23 verdict or the eve of trial. See Nirmul Decl., Ex. D. Kessler Topaz's trial experience  
24 is another critical fact motivating the Snap Shareholder Group's motion and selection  
25 of Kessler Topaz given that this case was quickly approaching trial before the partial  
26 stay (and will quickly advance toward trial after the stay is lifted).

27 Moreover, Kessler Topaz's ability to represent the class is conclusively  
28 demonstrated through the quality of representation it has already provided the class as



1 the current Court-appointed Lead Counsel. Indeed, as discussed herein, Kessler Topaz  
2 has diligently led the class past Defendants’ motions to dismiss, has engaged in  
3 substantial discovery efforts, and has advanced the litigation toward trial.

4 Thus, the Court can be assured that the class will continue to receive the highest  
5 caliber of legal representation should it approve the Snap Shareholder Group’s  
6 selection of Kessler Topaz as Lead Counsel for the class.

7 **3. In the Alternative, the Court Should Appoint the Snap Shareholder**  
8 **Group as Co-Lead Plaintiff and Kessler Topaz as Co-Lead Counsel**

9 If the Court ultimately determines that another movant asserts a larger financial  
10 interest than the Snap Shareholder Group and is otherwise qualified, the Snap  
11 Shareholder Group respectfully requests that—given the unique circumstances of this  
12 litigation—the Court should exercise its statutory discretion and appoint the Snap  
13 Shareholder Group as Co-Lead Plaintiff and appoint Kessler Topaz as Co-Lead  
14 Counsel. The use of a co-lead structure here would inure to the benefit of the class by  
15 ensuring the continuity of the class’s representation, avoiding the loss of significant  
16 knowledge developed by Kessler Topaz throughout the litigation, and the minimization  
17 of needless duplication of effort and expense.

18 As explained by the court in *In re Oxford Health Plans, Inc. Securities*  
19 *Litigation*, “the PSLRA expressly contemplates the appointment of more than one  
20 plaintiff” and “[b]ecause the PSLRA does not recommend or delimit a specific number  
21 of lead plaintiffs, the lead plaintiff decision must be made on *a case-by-case basis*,  
22 taking account of the *unique circumstances* of each case.” 182 F.R.D. 42, 49  
23 (S.D.N.Y. 1998) (emphasis added). To this end, courts throughout the country have  
24 concluded that under certain circumstances “the interests of a proposed class will be  
25 served best by the appointment of co-lead plaintiffs or multiple lead plaintiffs who did  
26 not move initially as a group.” *Pirelli*, 229 F.R.D. at 419 (collecting cases); *see also*  
27 *In re Millennial Media, Inc. Sec. Litig.*, 87 F. Supp. 3d 563, 570 (S.D.N.Y. 2015)  
28 (“courts routinely adopt a co-lead plaintiff structure where it ‘best serve[s]’ the

1 interests of the proposed class given ‘the circumstances of th[e] particular case’”) (quoting *Oxford*, 182 F.R.D. at 45) (alterations in original); *Lusk*, 2015 WL 9858177, at \*2 (appointing co-lead plaintiffs where doing so would “best protect the interests” of the class); cf. *Estakhrian v. Obenstine*, No. CV 11-3480 FMO (CWx), 2017 WL 2661616, at \*7 (C.D. Cal. June 20, 2017) (noting “court’s duty . . . to protect class members”) (internal quotation and citation omitted). In doing so, these courts have expressly noted their “discretion in the lead plaintiff appointment process,” *Pirelli*, 229 F.R.D. at 420, as well as their “interest in managing and maintaining the orderly progression of the case.” *Lusk*, 2015 WL 9858177 at \*2 (appointing two movants as co-lead plaintiffs because such a structure would “deter any interruption in the litigation arising out of a conflict of interest challenge to class representation”); see also *Lucent*, 221 F. Supp. 2d at 488 (pairing the existing lead plaintiff with a new movant asserting the largest financial interest when subsequently-filed securities class actions were consolidated with the existing class action).

15 The foregoing authorities confirm the Court’s ability to appoint co-lead plaintiffs where the class’s interests will be protected. This case is exactly the situation where a co-lead structure is needed as this is not the typical lead plaintiff motion process occurring at the outset of litigation where no movant can claim specialized knowledge that would unquestionably enhance the representation of the class. Rather, in the sixteen months since the previous lead plaintiff was appointed, Kessler Topaz—as the Court-appointed Lead Counsel—substantially advanced the interests of the class and has developed institutional knowledge regarding the facts and legal theories at issue in this case. These efforts cannot be understated given that Kessler Topaz has expended significant time:

- Investigating and drafting a highly detailed complaint which included identifying and developing critical confidential witness testimony;

- defeating Defendants’ motions to dismiss (and a subsequent motion for interlocutory appeal);
- retaining and consulting with industry and damages experts in advance of class certification and trial;
- engaging in substantial discovery practice involving the preparation of more than forty document requests, the service of fifteen document subpoenas and four deposition subpoenas on third parties, the production of more than 1.5 million pages of documents by Defendants, and the briefing and argument of related discovery motions;
- completing class certification briefing (including defending the deposition of two proposed class representatives); and
- beginning preparations for the previously scheduled March 2019 trial.

Indeed, Kessler Topaz has devoted more than 20,000 attorney hours (or approximately \$7.5 million in lodestar) and hundreds of thousands of dollars in expenses, *see* Nirmul Decl., ¶ 20, prosecuting the class’s claims in this litigation—no other candidate before the Court can make a similar showing of its commitment.

The adoption of a co-lead structure here guarantees that the knowledge developed by Kessler Topaz will not simply be tossed aside if another movant is appointed as the lone lead plaintiff, and avoids the needless delay and duplication of effort and expense that would accompany the appointment of a lead plaintiff and a lead counsel starting from scratch with no material knowledge of the facts in this case. *Cf. Lucent*, 221 F. Supp. 2d at 488 (utilizing co-lead plaintiff structure consisting of previously-appointed lead plaintiff and newly-appointed lead plaintiff movant); *In re Twitter Inc. Sec. Litig.*, 326 F.R.D. 619, 629 (N.D. Cal. 2018) (addressing issue at class certification and noting that “courts in this district and circuit have appointed co-class counsel in PSLRA cases”).

1 **IV. CONCLUSION**

2 For the reasons set forth above, the Snap Shareholder Group respectfully  
3 requests that the Court grant its Motion in its entirety.

4 DATED: January 31, 2019

5 Respectfully submitted,

6 **KESSLER TOPAZ**  
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